SUPREME COURT OF THE UNITED STATES

77-6835

Edward Wayland	*	
	*	
v	*	S.Ct. No.
	*	C.A.1 No. 78-1021
	*	D.C. No. 76-3467-T
	*	
Town of Ipswich	*	
	*	

APPELLANT'S JURISDICTIONAL STATEMENT

The Appellant/Plaintiff, Edward Wayland, appeals the rulings and decisions of the lower courts in forma pauperis arising under Amendment 1 and Rule 32, 24(c) of the F.R.A.P. and Rules 39, 47, and 53 of the Supreme Court Rules.

JURISDICTIONAL STATEMENT

Jurisdiction is granted this Court by 28 U.S.C. Sect 1291; and Amendments 1, 4, 5, 6, 7, 8, 9, 10, 14 which guarantee to the Plaintiff the right to a fair trial, by jury if so demanded on a guaranteed right to petition the government for redress of grievances; any one of said Amendments is jurisdictional by the Supremacy Clause of the Constitution, and Article 6(3) which brings the entire Constitution into the Court; and invalidates any and all Statutes in violation of the Constitution its guarantees, meaning, and intent.

Civil Rights jurisdiction is granted under 42 U.S.C 1983, 1985; 28 U.S.C. 1331, 1343; 18 U.S.C. 241, 2236; and Amendments 1, 4, 5, 6, 7, 9, 10, 14.

Orders appealed from:

Plaintiff's Motion to Find Defendant in Default 2/8/77
Denied without reason 2/11/77

Order June 10, 1977 (partial dismissal)

Order of Dismissal January 6, 1978

Denial Motion to appeal Forma Pauperis March 1, 1978
Princi, Magistrate

Denisl Motion to Vacate 3/17/78, den. 3/23/78 (no reason given)

Memorandum and Order (C.A.1) 3/9/78

Motion to Vacate (C.A.1) 3/17/7[illegible] Den. 3/23/7[illegible] (dated 3/17/7[illegible])

That in denying the Plaintiff, Edward Wayland, hearing, trial-by-jury as demanded, the District Court and the Court of Appeals-1 has perpetrated a Bill-of-Attainder, denied fundamental rights and "failed to protect" as guaranteed by both the Constitution of the United States and the Constitution for the Commonwealth of Massachusetts which was accepted by Congress almost 200 years ago.

Appeal is taken pursuant to 28U.S.C. 1253, 1291, and all above.

This is an Appeal on Civil Rights violations by the Town of Ipswich by way of vicarious liability of its officers and men, and of legal representation of the Town of Ipswich which malicious persecution/prosecution has continued to the present date, all done under "color-of-law" in violation of Article 6(3) which is brought to the Town of Ipswich via member-of-the-court Town Counsel and by the Constitution of the United States, of Comm. of Mass., and Omnibus Crime Control and Safe Streets Act of 1968.

QUESTIONS PRESENTED

Can a Town Municipality claim immunity for actions under "color-of-law" of its duly authorized personell; and at the same time actively persecute criminal charges and Move to have property illegally seized destroyed?

Can a Town Municipality disclaim jurisdiction after having admitted jurisdiction in "Fails to State a Claim...", and once established (Federal Rules Decisions Rule 12(b)(6) citations) jurisdiction can no longer be questioned?

Can a Town Municipality use an obviously unconstitutional minor-statute and convert a minor charge into an "infamous" crime because the target does not have the proper "humility"?

STATEMENT OF THE FACTS

The Plaintiff, Edward Wayland, moved to Ipswich, after bad neighbors, whose sanity may-or-may-not-be in dispute, had driven his daughter's family out of the house. Almost immediately his house was robbed; and the daughter volunteered to return, but only if she could have some-one with her, which became the combination baby-sitter, companion, housekeeper, Marie McMahon.

The continual attacks against the Plaintiff, the daughter

never ceased, and very shortly began to include Marie McMahon and her friends. (The previous owners, Robinsons, admitted in writing they had been driven out by these same bad neighbors).

On May 20, 1976, the Plaintiff, Edward Wayland, was informed triumphantly by one of these bad neighbors that Marie McMahon had been arrested for taking a shot with a rifle.

When the Plaintiff recovered his car in Wenham and went to the Ipswich Police Station, he walked into a Nightmare. He was threatened, terrorized, without Miranda, in violation of directives (by phone) of his attorney, forced to drive 5 miles to his home where two guns were seized without search warrant, although a warrant was produced at trial signed by a clerk, not a judge.

The Plaintiff, Edward Wayland, was later charged with allowing an unlicensed person to use his car; because Plaintiff refused to sign a stolen-car-complaint.

The Police refused to investigate, refused to accept charges against the bad neighbors, refused to Disclose, refused to Dismiss.

The trial was a farce. The Plaintiff was not allowed to call witnesses, the counter-charges were dismissed without being heard, and the trial was stopped the moment the Plaintiff began to challenge the Police from the witness stand. The Plaintiff was found not-guilty; Marie McMahon was found guilty...without a jury which the Commonwealth does not allow at this stage, in violation of Amendment 6 and 14 via Article 6(3).

At a hearing for recovery of property, the Chief and the Judge were again abusive, threatening, terrorizing, etc. and the motion was continued indefinitely.

When Plaintiff began action against the Police for Civil Rights violations, the Town of Ipswich elected to defend by having Town Counsel, F Dale Vincent, represent in violation of Title 42 prohibitions; when the Town Counsel changed to Charles C Dalton, Dalton then took over representing the Police.

And then, acting as Town Counsel, Dalton moved the district court to destroy the illegally seized gun of the Plaintiff, Edward Wayland; a Motion that is not normally done in Massachusetts, thereby acting for the Town of Ipswich in an official capacity.

Even though the Court action was finished, the Plaintiff, Edward Wayland, remained under "loose" police surveilance, in that Plaintiff was supposed to KNOW he was under surveilance; and his phone was tapped. When, in May 1977, the daughter moved out of the Ipswich home, police cruisers checked every hour for a day and a half.

Eventually, the Plaintiff, Edward Wayland, was driven out

of Ipswich; and remained under surveilance until then; and, after Ipswich Police learned of where Plaintiff had moved, the local police kept surveilance until they were convinced it was a waste of time and the town's money.

CONDENSATION OF ARGUMENT

Where the Town of Ipswich has elected to defend its agents via Vincent, Dalton, Town Counsel, it has accepted responsibility for the actions of its agents both directly and by vicarious liability.

Where the Town of Ipswich has taken no action against the wrong-doers, even promoted one of them, it has admitted accepting responsibility; and has entered into the comppiracy to deprive the Plaintiff of his Civil rights; and has accepted jurisdiction by claiming 12(b)(6) as a defense wherein jurisdiction is accepted, and all facts admitted in "fails to state a claim..."

Where the Town of Ipswich has continued persecuting the Plaintiff in bad faith and with malice, it has become a "person" for the purposes of the Civil Rights Act.

Nowhere in the Constitution of the United States is immunity granted to a municipality; the local statutes passed on the coat-tails of Amendment 11 are obviously unconstitutional and in violation of the meaning of the Constitution.

The Plaintiff, Edward Wayland, has been unconstitutionally deprived of his right to a jury; and any Rules to the contrary are a violation of Amendments 1, 4, 5, 6, 7, 8, 9, 10, 14.

The Constitution is brought to the Town of Ipswich via Town Counsel who, as a member-of-court, is bound by Article 6(3) to uphold the Constitution, which Article is more determinative than Amendment 14, and the most ignored.

Where the Judge in Instant case was antagonist (1973) (not remembered until recently) there is the strong possibility he may not have been properly unbiased; and should have removed himself voluntarily, but did not.

ALSO

No relevant reasons were given for the Dismissal and the Denial of Motions. Action was brought under a shot-gun of Constitutional Amendments, which were completely ignored.

Nor was it ever established that the gun, the Town of Ipswich is so eager to have destroyed, was ever used in any crime nor attempt. The original complaint was rifle, and then changed to pistol, after it was seized illegally from Plaintiff, Edward Wayland; and any crime in Massachusetts, with the present and past hysterical propaganda is automatically and "infamous" crime... even of an innocent bystander.

The Plaintiff, Edward Wayland, has been discriminated against, defamed; the object of malicious, vindictive persecution/prosecution made in bad faith and abuse of process.

13 Cleve. Marsh L.Rev 163 notes, 1936
16 N.C. L.Rev 277, 1948
32 Minn. L.Rev 805, 1937
7 Brook L.Rev 123
Wood v Graves 144 Mass 365, 11 N.E. 567 (1887), etc./

VICARIOUS LIABILITY

The idea of vicarious liability was common enough in primitive law. Not only the torts of servants and slaves, or even wives, but those of inanimate objects were charged against the owner. This is carried forward by Amendment 9 of the common law and unenumerated rights.

A multitude of very ingenious reasons have been offered for the vicarious liability of a master: he has more or less "control" over the behavious of a servant; and has "set the whole thing in motion" and therefore responsible for what has happened.

In re Yamashito, 327 U.S. 1 (1946) Japanese General Tomoyuki Yamashito condemned to death for failing to prevent atrocities by his troops during the American invasion of Luzon.(Chief Justice Stone/Douglas MacArthur)
THE NUREMBER TRIALS
U.S. v Richard Nixon

Most courts have made little or no effort to explain the results; and have repeatedly stated "he who does a thing through another does it himself" or "respondeat superior"...which means nothing more than "look to the man higher up". (Prosser)

The traditional definition of a servant (also agent) is that he is a person employed to perform servicesin the affairs of another,whose physical conduct in the performance of the service is controlled, or is subject to a right of control by the other.

Once it is determined that the man at work is a servant(agent the master becomes subject to vicarious liability for his torts. He is, of course, liable on the basis of any negligence of his own in selecting or dealing with the servant(agent), or for the latter's acts which he has authorized or ratified upon familiar principles of agency law.

Dempsey v Chambers 154 Mass. 330, 28 N.E. 279 (1891)
Crotty v Horn, 186 Ill App. 74 (1914)
Kirk v Montana Transfer Co. 56 Mont 292, 184 P.987(1919)etc.

But his vicarious liability (Town of Ipswich), for conduct which is in no way his own, extends to any and all tortious conduct of the servant(agent) which is within the "scope of the employment". However, Town of Ipswich, via authorization and ratification of Town Counsel, Dalton, has actively entered into the action.

38 Mich. L.Rev 1222 (1940)
24 Tenn. L.Rev 241 (1957) etc.

A master cannot escape liability merely by ordering his servant(agent) to act carefully. In this instance, Town of Ipswich actively participated.

Garretzen v Duenckel 50 Mo. 104 (1872)
Mautino v Piercedale Supply Co 338 Pa. 435, 13 A.2d 51(1940)
Carrol v Beard-Laney Inc. 207 S.C. 339, 35 S.E.2d 425(1945)

A master who has entrusted his servant(agent) with an instrumentality which is highly dangerous in itself (police authorization) or is capable of being misused in some way involving a high degree of risk to others, has been held liable when the servant(agent) has misused it for any purpose entirely his own.

Steward v Cary Lumber Co 146 N.C. 47, 59 S.E.545(1907)
Euting v Chicago & N.W.R.Co 116 Wis 13, 92 N.W.350 (1902)
Smith's Adm'x v Middleton, 112 Ky 588, 66 S.W.388 (1902)

and is based upon the apparent authority of the agent to act for his principal

Rhone v Try Me Cab.Co. 62 App.D.C. 201, 65 F.2d 200(1933)
Middleton v Deances 257 Ky 42, 77 S.W.2d 425 (1934)
Acherman v Robertson, 240 Wis 421, 3 N.W.2d 723 (1942)etc.

The employer's liability for punitive damages is of course clear where he has authorized the employee's misconduct, or where he has participated in it. He may, however, become liable for such damages by "ratification" when, with knowledge of the tort, he fails to take action expressing his disapproval of it (one participant was promoted), as by retaining the offending servant(agent) in his employment; or by continuing the action begun by the offending servant(agent).

Harvour v Geltis, 91 Cal. App2d 603, 205 P.2d 424(1949)
Will v Hughes, 172 Kan 45, 238 P.470 (1951)
Security Alum. Window Mfg. Corp. v Lehmen Associates, Inc., 108 N.J.Sup. 137, 260 A.2d 240(1970) etc.

The Town of Ipswich has authorized and ratified the misconduct of the servant(agent) by furnishing Town Counsel where Civil Rights Laws specifically order this NOT be done; and actively attempted to destroy the property of the Plaintiff, Edward Wayland. In so acting, the Town of Ipswich has created a "proprietary"

rather than "governmental" function; thus making the Plaintiff, Edward Wayland, the victim of government-crime; and has acknowledged the un-constitutional behaviour of servant(agent) by more of its own un-constitutional behaviour;:thereby both the Town of Ipswich and the Comm. of Mass. has "failed to protect" in violation of Article 10 of the Constitution for the Commonwealth of Massachusetts.

> "Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property..."

and Article 5, which has never been repealed nor amended:

> "All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority whether legislative, executive or judicial, are their substitutes and agents, and <u>are at all times</u> accountable to them".

IMMUNITY

Nowhere in the Constitutionsof the United States nor for the Commonwealth of Massachusetts is municipality granted the alleged immunity the Town of Topsfield claims. In fact, one of the former presidents, at the Constitutional Convention, stated that it was not the Federal, nor State governments that was the most dangerous....it was the municipal.

The statutes supporting an alleged immunity are obviously unconstitutional and a violation of both constitutions. Further, if the municipality is given the right of immunity (where power rests with the people); by the same token the right-to-sue and not-to-be-sued is the rankest form of discrimination; a violation of the meaning and spirit of the Constitution; and a return to the same forms of despotism and oppression (under a modern name, of course) that was the aim of the American Revolution to <u>abolish</u>.

The Plaintiff, Edward Wayland, herein maintains that as a citizen of the United States the Town of Ipswich has no constitutional right to prosecute him without being liable for that prosecution.

In a number of states there are statutes which have changed, by common law, by imposing liability directly upon municapalities:

California Public Liability Act
Wisconsin Safe Place Statute, etc.
7 So.Cal L.Rev 412-448(1934)
Gibson v County of Mendocino, 16 Cal2d 80, 105 P2d 105(1940)
Heiden v City of Milwaukee 222 Wis 92, 275 N.W.(1940)
Miller v City of New York, 235 App.Div 259, 257 N.Y.S922 (1940) etc.

Omnibus Crime Control and Safe Streets Act of 1968 has brought constitutional and federal procedures to the state and municipality (in addition to Article 6(3)) that accepts federal assistance in any form. The Town of Ipswich has done so; thereby bringing the Town of Ipswich totally within the regulation and juriddiction of the federal government and all it entails.

In Hargrove v Town of Cocoa Beach (Fla. 96 So2d 130 (1957), the court abruptly held the city liable when a prisoner, left unatt ended in jail, was suffocated when a fire broke out. It declared that any municipality should have no immunity from tort liability, even in its "governmental" capacity. "To continue to endow this type of organization with sovereign divinity appears to us to predicate the law of the Twentieth Century upon an Eighteenth Century anachronism."

And subsequently liability was established; and immunity abolished in Illinois, Arizona, California, Indiana, New Jersey, Wisconsin, Idaho, Iowa, New York, Oregon, Utah, Washington; and the list is steadily growing.

The Plaintiff, Edward Wayland, in self-defense, has in his posession several professional books:

"THE BIG BROTHER GAME" Lyle Stuart Inc. N.J.(Bugging, wiretapping, tailing, optical and electronic surveilance, surreptitious entry.
"HANDBOOK OF THE LAW OF SEARCH AND SEIZURE" Dept. Justice 1971
"PROVING FEDERAL CRIMES" U.S.Gov't Printing Office
"LAW OF ARREST AND SEARCH AND SEIZURE" Markle (state atty)
"TRIAL BY JURY" Lysander Spooner (1852)

The sum total of these books is that by instruction, the professional reader is taught what the law is---AND HOW TO CIR_ CUMVENT IT---

In the Police Station is a surreptitious entry kit described by THE BIG BROTHER GAME....paid for by the Town of Ipswidh.

These same officers have been charged (Haas?) with various violations in the investigation and arrest in a murder case, 1977, of the constitutional rights of the suspect.

With ambitious officers, given blanket-protection by the Town, there is no doubt they have access to the same ar similar volumes (there are hundreds on the market) and therefore cannot be excused on non-knowledge for violations of the Plaintiff's Civil Rights, etc. Their limitation has been only what level is acceptable in Court.

ADMISSIONS BY TOWN OF IPSWICH

By defending with F.R.C.P. Rule 12(b)(6) "Fails to state a claim...." the Town of Ipswich has averred and admitted all the claims on the Plaintiff's Complaint. This is upheld by multiple rulings of the Federal Rules Decisions 12(b)(6). And in so admitting has established (a) the claim, (b) the illegal procedures taken, and (c) the servant(agent) relationship between the officers and the Town of Ipswich. It has also accepted jurisdiction of the Court (FRD).

For further argument on these and allied points, Plaintiff, Edward Wayland, refers to the various answers, replies and memoranda of the District Court.

CONSTITUTION FOR COMMONWEALTH OF MASSACHUSETTS

Art. 1. "...the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; that of seeking and obtaining their safety and happiness."

Art 5. "All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them."

Art. 8. "In order to prevent those, who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments."

Art.10. "Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently to contribute his share to the expense of this protection...."

Art.17. "The people have a right to keep and to bear arms forthe common defense..."

Art.29. "It is essential to the preservation of the rights of every individual, his life, liberty, property and CHARACTER, that there be an impartial interpretation of the laws, and administration of justice...."

Art. 48.11 "No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition....the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search...."

And Article 6(3) which brings the U.S.Constitution directly to the States and municipalities:

"The senators and representatives before mentioned, and

> the members of the several state legislatures, and all executive and judicial officers, both of the United States and ofthe several states, shall be bound by oath or affirmation, to support this constitution; ..."

By which article brings Article 3(2) to the States, and reciprocally, via Amend. 1 and 9, brings this action into the jurisdiction of the Federal Courts, for the Town of Ipswich has violated the Constitutionally protected rights of the Plaintiff, Edward Wayland,

TRIAL BY JURY

The Constitutions guarantee the right to a jury trial (47 AmJur2d S.19) which guarantee was broken by Town of Ipswich in that--in the "infamous"(and anything to do with weapons has publicly been converted into "infamous"; and Town of Ipswich had minor-charge tried WITH the gun charge agains Marie McMahon) crime, with the full knowledge and consent of the Town in that the Prosecutor was the Town's Chief of Police. The Plaintiff, Edward Wayland, was denied right to a jury trial in the District Court of Mass. on the economy-grounds that Comm. of Mass. does not have jury trial at that level...in which case the Comm. of Mass. and Town of Tpswich should have dismissed, but did not.

This is further acknowledged (47 AmJur2d S.52) and by Amendment 6, which lists minor criminal and civil cases; but this was converted into "infamous" by the Comm. of Mass. during the trial, and for years BEFORE the incident with an extensive anti-gun propaganda campaign, for their self-serving interests, so that anyone involved with weapons, no matter how innocently, is an instant pariah.

And in Section 11 (47 AmJur2d)

> "However, insofar as criminal cases are concerned, the United States Supreme Court has held that the due process clause of the Fourteenth Amendment to the Federal Constitution imposes on the States the requirements of Article 3 S.2 of the Constitution, and of the Sixth Amendment, that jury trials be available to criminal defendants. It has also been stated that the words "law of the land" or "due process of law", when used in considering the property rights....but also means a determination thereof by a jury."

By this fact, both Civil and Criminal, the Plaintiff was deprived of his right to a trial by jury. To state that the Plaintiff had access to a jury trial, if appealed, is begging the issue; he was entitled at the FIRST trial: and where the Jury was not allowed, in violation of centuries of law from the Magna Charta, common law, the government, not the jury was in control.

Nor can the right to jury trial be hedged nor amended...

Section 18 (47 AmJur2d)

"....the omission from the constitutional guarantee of a jury trial of an enumeration of the details or incidents of the right of trial by jury does not give the legislature or the courts authority to destroy any of the substantial elements of the right which was intended to be secured."

Section 20 (47 AmJur2d)

"The right of trial by jury, where it is granted by constitutional or statutory provisions, cannot be taken away or impaired by the courts..." "The view has been taken that a court sitting without a jury, where there is a right to a jury trial which was not been waived, has no jurisdiction of the case.".

Section 47(47 AmJur2d) further spells out that in a criminal case the Plaintiff was guaranteed the right to trial by jury (and was denied with the knowledge and perauasion of the Town of Ipswich); and again, in Section 48 further emphasis is made on Article 3 in that, together with Amendment 6 it is binding upon the States, and referring to the common law; and by the common law (also Section 50) the jury in all criminal cases has the right to determine the law and the facts, which the Town of Ipswich did not allow.

Section 53(47 AmJur2d) specifically points out that even for violations of municipal ordinances

"may be 'criminal'cases..."

"jury trial applies to the violation of an ordinance which is also a violation of the criminal(code)laws of the state."

And that, 47 (AmJur2d)...Section 83..."...provides that such a waiver (of jury trial) must clearly and affirmatively upon the record, WAIVER CANNOT BE ASSUMED OR IMPLIED FROM THE SILENCE OF THE ACCUSED OR HIS MERE FAILURE TO DEMAND A JURY TRIAL."

At no time did the Plaintiff, Edward Wayland, waive a jury trial on the charge of "infamous" trial.

MOTIONS DENIED

ORDER JUNE 10, 1977 Tauro, D.J.

An order, even a partial order, by a Court without a hearing is a Bill-of-Attainder. In partially dismissing, the Court was in error in that it denied the Jury-Trial, as guaranteed by the Constitution of the United States, to the Plaintiff, Edward Wayland.

Nowhere, since the Magna Charta, which updated version is called the Constitution of the United States is a municipality given the freedom of absolute sovereignty; and the cases cited by the Court denote an alarming drift toward despotism, the despotism of

irresponsible and uncontrolled government protected by a subverted Constitution.

The error is a violation of the right to petition (Amend. 1) violation of the right to Jury Trial (Amend 7), Violation of Article 6(3) by which all Federal and State branches of government are bound to uphold the Constitution.

No hearing was held, and no trial by Jury; and where, as in Green v U.S., the Supreme Court held that prior decisions were not binding, (that is binding only upon those immediately involved), both citations are not valid. In fact, Brault v Town of Milton, 527 F2d (CA2 1975) 732 which quotes one citation used by the court:

> "We reject the view, therefore, that municipalities enjoy any special status which would immunize them from suits to redress deprivations of federal Constitutional rights."
> See City of Kenosha v Bruno, 412 U.S.507,516, 93 S.Ct. 2222, 37 LEd2d 109 (1973)
>
> "The Fourteenth Amendment itself gives rise to a claim for relief based upon its violation, and that the district court has federal question jurisdiction.."
>
> "The plaintiffs have stated a cause of action under the Due Process Clause of the Fourteenth Amendment for which relief may be granted."
>
> and
>
> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury."
> Marbury v Madison, 1 Cranch 137, 1632 LEd 60 (1803)

And in so acting, the U.S.District Court has failed to protect the Plaintiff, Edward Wayland, in violation of the Constitution of the United States.

And the Town of Ipswich has failed to protect the Plaintiff, Edward Wayland; when his home was damaged, ransacked, and robbed, the Town made no attempt to solve the crime; nor do anything about complaints against troublesome neighbors.

And ORDER, JANUARY 3, 1978, Tauro, D.J.

The Court dismissed the remaining 28 U.S.C. S.1331(a) without a hearing, without Jury Trial as demanded, again a Bill-of-Attainder, for a Bill-of-Attainder can be perpetrated on a Civil as well as Criminal instance. The Plaintiff, Edward Wayland, refers to other reasons above.

The Court totally ignored the various Amendments cited by the Plaintiff, Edward Wayland,

And also,

Ignored the Special Note

"Pro se complaints, according to the Supreme Court are held 'to less stringent standards than formal pleadings by lawyers,' and regardless of who represents the plaintiff a motion to dismiss is not to be granted....."
Haines v Kerner (1972) 404 US 519, 30 LEd2d 652, 92 S.Ct 594, 596, Reh Den 405 US 948, 30 LEd2d 916, 92 S.Ct.963.

And, in denying PLAINTIFF'S MOTION TO FIND DEFENDANT IN DEFAULT, in that, on an AMMENDED COMPLAINT, all prior Motions by Defendant are moot (FRD multiple decisions), and new Motions must be made. In Instant Case, Town of Ipswich did not move timely; and then attempted to re-enstate mooted motions. Federal Rules of Civil Procedure state this cannot be done. This is violation of the Equal Protection Clause of Amendment 14, and discriminatory.

In MEMORANDUM AND ORDER March 1, 1976, Princi U.S.Magistrate

The Motion to appeal forma pauperis was also denied without a hearing (Bill-of-Attainder) by a Magistrate, who did not have the authority to deny; (Which fact was so admitted by Motion to Vacate which was denied by U.S.Dist.Ct. judge).

Also, the code cited is a violation of the Plaintiff's right to petition for redress of grievances, and violation of F.R.C.P. Rule 84 which specify that FORM is not critical; and multiple rules and decisions of the Supreme Court that "professionalism" is not a factor; nor even mistaken notion of the relevant law.

The right to proceed forma pauperis is a Constitutional Right guaranteed by Amendment 1, and also the unenumerated rights of Amendment 9. The Federal Court does not have the discretionary statutory right it claims, regardless of self-serving cases cited.

The contention the Instant Case is frivolous is begging the issue. The Motion must be examined on the merits of the motion and not on self-serving attempt to justify an unconstitutional DISMISSAL. Furthermore, if the Town of Ipswich, hadn't violated the Constitutional rights of the Plaintiff, Edward Wayland, there would not have been any action. This is an important point that has been ignored.

The Constitution for the Comm. of Mass., Article 5, and 10 guarantee that the government is accountable and the Plaintiff is guaranteed the right to protection of that government. How those plain, unvarnished facts can be interpreted as "frivolous" is an erosion of the very foundations of the Constitution; and any decisions to the contrary are a violation of BOTH constitutions.

the MEMORANDUM AND ORDER of C.A.1, March 9, 1978, unsigned totally ignored the various Amendments listed, and refused to consider that Plaintiff, Edward Wayland, had been refused Jury Trial as demanded and guaranteed by Amendment 7.

This also was made without a hearing, and is a Bikl-of Attainder, and a violation of the Plaintiff's right to petition for redress of grievances.

If, at this point, it appears that Plaintiff, Edward Wayland, does not have the "proper humility", it is more a true state of shock. Plaintiff is 61 years old and had been taught that he was protected by the best Constitution in the world wherein it was the Government that was restrained, not the citizen.

The reasons cited by the C.A.1 are not valid, and do not apply when measured against the Constitution: Amendments 1, 4, 5, 6, 7, 8, 9, 10, 14, and the various Articles. The mitaken error of the C.A.1 is in measuring against citations which have drifted perceptibly from the spirit and the meaning of the Constitution.

Nowhere in the Constitution is a municipality given immunity; and nowhere is there immunity when the municppality actively enters into the persecution/prosecution.

The ORDER OF THE COURT, C.A.1 3/17/78 denying motion to vacate dismissal was also made without a hearing and is a Bill-of-Attainder and a violation of the Plaintiff's right to petition the government for redress of grievances.

SUBSTANTIAL REASONS

The Constitution of the United States has been under constant attack by self-serving interests ever since it was first ratified; and, just like the Magna Charta on which it was based, there has been a continual subtle errosion of the guarantees by the telic theory of case-citations where each case decisions swings a hair further away from the Constitution.

There have been many court decisions and statutes that have denied the municipality has the sovereignty and immunity that is claimed. Nowhere in the Constitution is this admitted or hinted at. In fact, if the municipality is not held in check and abides by the Constitution, the tyrants waiting gleefully in the wings will take over. The names will be different, but the principle will be Hitler, Stalin, Napoleon, Caesar, etc.

To return to the Constitution is NOT a frivolous, nor a dubious demand, and cannot be so labeled. Otherwise is a Police

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IN THE

77-6835

SUPREME COURT OF THE UNITED STATES

Edward Wayland

Plaintiff/Appellant

against

Town of Ipswich

Defendant/Appellee

JURISDICTIONAL STATEMENT

Edward Wayland
6 Central St.
Wilmington, Mass. 01887

Charles C Dalton
71 Central St.
Ipswich, Mass. 01938

77-6835

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State; which was not denied by the Town of Ipswich when charged with creating a police state in open court.

The Plaintiff, Edward Wayland, not a professional, appologizes to the Court for errors and ommissions and herein denies any unanswered points. Plaintiff appeals in forma pauperis because of inability to pay costs, etc. which would not have been necessary if the case had been tried in the District Court.
And moves the Court to find for the Plaintiff, Edward Wayland,
or, in the alternative
To remand to the District Court for Jury Trial.

respectfully submitted,

Edward Wayland pro se
forma pauperis

Edward Wayland
8 Central St.
Wilmington, Mass.

Appendix A

A photocopy of the Search Warrant and Return were unphotographable.

Appendix D

A photocopy of the Third Party Answer was unphotographable.

TOWN OF IPSWICH

IPSWICH, MASSACHUSETTS 01938

TOWN COUNSEL
(617) ~~XXXXXX~~ 356-0106

February 23, 1977

Mr. Hollie Bucklin, Clerk
Third District Court of Essex
Town Hall
Ipswich, Massachusetts 01938

Re: Commonwealth vs. Marie R. McMahon;
Complaints No. 239, 240, 241, 242,
243, 258

Dear Mr. Bucklin:

I enclose original of Commonwealth's Motion for Forfeiture of Pistol in the above entitled Complaints. I have this day provided copies of said Motion to Defendant Marie R. McMahon and Mr. Edward Wayland, both by certified mail, return receipt requested.

The above-captioned Complaints were originally heard by Judge Joseph Furnari, sitting in the Third District Court of Essex. Consequently, I suggest that it would be most appropriate for Judge Furnari to also hear the enclosed Motion. I have checked with the office of the Chief Justice of the District Courts; the secretary there informed me (on February 18, 1977) that Judge Furnari was not scheduled to sit in Ipswich for the next five months. I hope that Judge Furnari will in fact be sitting in Ipswich sometime during the next five months. In the event that you are aware of a day on which Judge Furnari will in fact be sitting in Ipswich, I would greatly appreciate it if you would place the enclosed Motion on the daily list, giving the appropriate notice to myself, Marie R. McMahon, and Edward R. Wayland.

Thank you for your anticipated cooperation in this matter.

Sincerely yours,

Charles C. Dalton
Town Counsel

CCD:hsr

cc: Armand Brouillette, Chief of Police
Marie R. McMahon
Edward Wayland

COMMONWEALTH OF
MASSACHUSETTS
ESSEX, SS.

THIRD DISTRICT
COURT OF ESSEX
NO'S. 239, 240,
241, 242, 243,
258

COMMONWEALTH)
)
vs.) MOTION FOR FORFEITURE OF PISTOL BY COMMONWEALTH
)
MARIE R. McMAHON)

1. Now comes the Commonwealth in the above Complaints and moves that this Honorable Court order that the pistol described herein be:

A) Forfeited to the Commonwealth; and

B) Delivered forthwith to the Commissioner of Public Safety for destruction or preservation in the discretion of the Commissioner of Public Safety, both by the written order of this Honorable Court, under the provisions of M.G.L. Chapter 276, Section 3(c).

2. The pistol referred to above is a Model 949, Forty-Niner, twenty-two caliber pistol, serial number AA 8341, manufactured by H & R, Inc., Worcester, Massachusetts.

3. The pistol described in paragraph two is presently in the possession of the Police Department of the Town of Ipswich and was used on or about May 20, 1976 by Marie R. McMahon unlawfully and for an unlawful purpose, within the meaning of M.G.L. Chapter 276, Section 3(c) in the commission and subsequent conviction of a violation of M.G.L. Chapter 269, Section 12(E) (Complaint #258) and in the commission and

CHARLES C. DALTON
ATTORNEY AT LAW
SEVENTY-ONE CENTRAL ST
IPSWICH, MASS. 01938

subsequent convictions of three (3) violations of M.G.L. Chapter 265, Section 15(B) (Complaints numbered 239, 240, and 241).

4. The pistol described in paragraph two was lawfully seized on May 20, 1976, by a member of the Police Department of the Town of Ipswich from the residence of Edward Wayland, located at and commonly numbered 17 Leslie Road, Ipswich, in response to a Search Warrant issued by the Court on May 20, 1976, under the provisions of M.G.L. Chapter 276, and upon which lawful return was made.

Respectfully submitted,

Charles C. Dalton

Charles C. Dalton, Town Counsel
Town of Ipswich

71 Central Street
Ipswich, Massachusetts 01938
617-356-0106

CHARLES C. DALTON
ATTORNEY AT LAW
SEVENTY-ONE CENTRAL ST.
IPSWICH, MASS. 01938

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

EDWARD WAYLAND	*	
	*	
	*	
	*	
V.	*	CA 76-3467-T
	*	
	*	
	*	
TOWN OF IPSWICH	*	

ORDER

TAURO, D.J. June 10, 1977

The court having received plaintiff's amended complaint and defendant's renewed motion to dismiss, it is hereby ORDERED that:

1. plaintiff's civil rights claims under 42 U.S.C. §§ 1983, 1985 are dismissed for failure to state a claim upon which relief can be granted against a municipal defendant, Kenosha v. Bruno, 412 U.S. 507 (1973); Bosley v. City of Euclid, 496 F.2d 193 (6th Cir. 1974);

2. plaintiff's claims under 18 U.S.C. §§ 241, 2236 are dismissed because plaintiff lacks standing to bring a criminal action against the defendant; and

3. the plaintiff has stated a claim for damages from constitutional deprivations over which this

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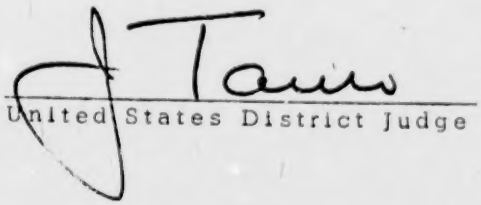
court has jurisdiction under 28 U.S.C. § 1331(a) and defendant's motion to dismiss that claim is therefore denied.



United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDWARD WAYLAND
Plaintiff

V

CA 76-3467-T

TOWN OF IPSWICH
Defendant

ORDER OF DISMISSAL

January 6, 1978

TAURO, D.J.

In accordance with the Orders of the Court entered June 10, 1977 and January 3, 1978,

IT IS ORDERED that the complaint be, and it hereby is, dismissed.

By the Court,

Deputy Clerk

Enter:

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

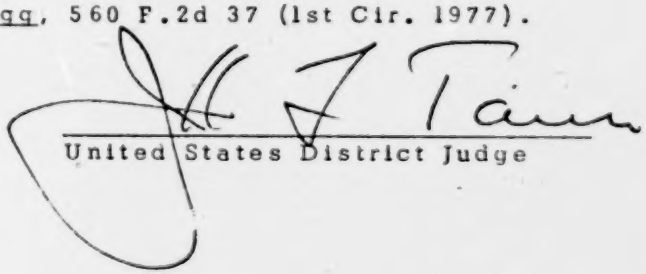
DISTRICT OF MASSACHUSETTS

EDWARD WAYLAND, Plaintiffs	*	
V.	*	CA 76-3467-T
TOWN OF IPSWICH, Defendant	*	

ORDER

TAURO, D.J. January 3, 1978

The court hereby modifies its order of June 10, 1977 and ORDERS that the plaintiff's remaining claim for damages for constitutional deprivations be dismissed because this court lacks jurisdiction under 28 U.S.C. § 1331(a). Kostka v. Hogg, 560 F.2d 37 (1st Cir. 1977).



United States District Judge

17

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

EDWARD WAYLAND *
*
*
*
V. * CA 76-3467-T
*
*
*
TOWN OF IPSWICH *

ORDER

TAURO, D.J. June 10, 1977

The court having received plaintiff's amended complaint and defendant's renewed motion to dismiss, it is hereby ORDERED that:

1. plaintiff's civil rights claims under 42 U.S.C. §§ 1983, 1985 are dismissed for failure to state a claim upon which relief can be granted against a municipal defendant, Kenosha v. Bruno, 412 U.S. 507 (1973); Bosley v. City of Euclid, 496 F.2d 193 (6th Cir. 1974);

2. plaintiff's claims under 18 U.S.C. §§ 241, 2236 are dismissed because plaintiff lacks standing to bring a criminal action against the defendant; and

3. the plaintiff has stated a claim for damages from constitutional deprivations over which this

court has jurisdiction under 28 U.S.C. § 1331(a) and defendant's motion to dismiss that claim is therefore denied.

United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Edward Wayland

v

Town of Ipswich

CIVIL NO. 76-3467-T

PLAINTIFF'S MOTION TO FIND DEFENDANT IN DEFAULT

1. The Plaintiff, Edward Wayland, moves this Honorable Court find and declare defendant, Town of Ipswich, in default pursuant to Rule 6(b)(1) of the Federal Rules of Civil Proceedure in that the Defendant has not filed timely request for extension of time.

2. The Defendant Town of Ipswich, has failed to Answer in 20 days pursuant to Rule 12(a).

3. The Defendant, Town of Ipswich, has failed the requirements of Rule 11: signature, address, attorney of record.

4. The Defendant, Town of Ipswich, has failed to deny pursuant to Rule 8(d).

5. The attorney for the Defendant, Town of Ipswich, does not have standing before this Honorable Court; all motions, etc. filed before standing have no weight retroactive.

6. Whereas the Defendant, Town of Ipswich, is in default and this is a Jury Action, the Plaintiff, Edward Wayland, moves this Honorable Court to Quash Memoranda and Hearing Scheduled for March 28, 1977.

WHEREFORE, Plaintiff prays:

1. That this Honorable Court find the Defendant, Town of Ipswich, in default.

2. That this Honorable Court dismiss Defendant's Motion to Consolidate, Motion to Dismiss, and all other motions.

3. That this Honorable Court Quash memoranda requirements and hearing scheduled for March 28, 1977.

DOCKETED

Edward Wayland pro se
forma pauperis
Edward Wayland
17 Leslie Rd.
Ipswich, Mass.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

EDWARD WAYLAND,

Plaintiff

v.

TOWN OF IPSWICH,

Defendant

CIVIL ACTION NO. 76-3467-T

MAGISTRATE'S NO. 78-57-P

MEMORANDUM AND ORDER

re:

APPELLANT'S MOTION TO APPEAL
FORMA PAUPERIS

March 1, 1978

PRINCI, U.S.M.

This matter was received by me on March 1, 1978, to make a determination with respect to the above-entitled motion, as plaintiff seeks to appeal the findings of the District Court.

With respect to this action, Tauro, D.J., issued three orders, as follows:

1. June 10, 1977: Defendant's motion to dismiss the plaintiff's claim for damages was Denied.

2. January 3, 1978: The court modified its order of June 10, 1977, and ordered that the plaintiff's "remaining claim for damages for constitutional deprivations be dismissed" for lack of jurisdiction in this court.

3. January 6, 1978: Tauro, D.J., issued the following order of dismissal:

> "In accordance with the Orders of the Court entered June 10, 1977 and January 3, 1978,
>
> IT IS ORDERED that the complaint be, and it hereby is, dismissed."

PERTINENT RULES AND LAW

Title 28 U.S.C. §1915, with respect to proceedings in forma pauperis, provides in pertinent part as follows:

"(a) Any Court of the United States may authorize the commencement...of any suit, action or proceeding, civil or criminal,..., without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay for such costs or give security therefor. Such affidavit shall state the nature of the action,...and affiant's belief that he is entitled to redress."

"(d) The Court...may dismiss the case...if satisfied that the action is frivolous or malicious."

Rule 8 of the Federal Rules of Civil Procedure provides in pertinent part:

"A pleading which sets forth a claim for relief,... shall contain...(2) a short and plain statement of the claim showing that the pleader is entitled to relief,..."

The test as to the sufficiency of a complaint is whether it states a claim which is wholly frivolous. Ratodvich v. National Football League, 77 S.Ct. 390, 352 U.S. 445 (Cal. 1967). A complaint should do something more than merely inform the clerk into which statistical category the case belongs. Fennel v. Svensaka Amerika Linien A/B, 23 F.R.D. 116 (D.C. Mass. 1958).

Rule 8 requires that the petitioner state a clear and concise statement of the claim and, in addition, that he state a cause of action pursuant to Rule 8(a)(2).

There is no constitutional right to appear in forma pauperis; it is wholly a statutory right. Smith v. Firestone Tire & Rubber Co., 255 F.Supp. 905 (D.C. Pa. 1966). The Federal Court has wide discretion in acting upon motions to proceed in forma pauperis by a plaintiff in a civil litigation, especially in civil rights actions. Torres v. Garcia, 444 F.2d 539 (9th Cir. 1971).

If a suit is frivolous and if chances of success are highly dubious, at best, the Court has an interest in protecting its forum from being abused by persons who are unable to pay costs or give security therefor. Urbano v. Sondern, 41 F.R.D. 355 (D.C. Conn. 1966), affirmed 370 F.2d 13, cert. denied 87 S.Ct. 1485, 386 U.S. 1034.

PRO SE APPEARANCE

Rule 6 of the Local Rules of Procedure provides in pertinent part:

> "(c) Except in special circumstances and by leave of court, a person who is not a member of the bar of this court...will be allowed to appear and practice before the court only in his own behalf."

Title 28 U.S.C. §1654, in pertinent part provides:

> "In all courts of the United States, the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."

Appearance of a litigant, in proper person, gives him no better right than a litigant represented by counsel. Barnes v. United States, 241 F.2d 252 (9th Cir. 1956); and such appearance may not be used to deprive litigants of their rights if represented by counsel. Morgan v. Sylvester, 125 F.Supp. 380 (D.C. N.Y. 1954), 220 F.2d 758, cert. denied 76 S.Ct. 112, 350 U.S. 867, rehearing denied 67 S.Ct. 201, 350 U.S. 919. If a litigant acts as his own attorney, he should be restricted by the same rules of evidence and procedure as those qualified to practice law; otherwise, ignorance is unjustifiably rewarded. Hutter Northern Trust v. Door County Chamber of Commerce, 467 F.2d 1075 (7th Cir. 1972).

Unless the "pro se" pleader sets forth, no matter how inelegantly, a short and plain statement of the claim showing that the pleader is entitled to relief, he should not be permitted to waste precious time of the defendant, the court, or of himself. F.R.Civ.P. 12(b)(6); Title 28 U.S.C. §§1331, 1346: Title 42 U.S.C. §§1981, 1995; Franklin v. Zuber, 56 F.R.D. 601 (D.C. N.Y. 1972).

On the basis of the foregoing, this Court concludes that this motion is frivolous; therefore, it is DENIED.

UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FILED IN CLERK'S OFFICE

MAR 17 10 30 AM '78

U.S. DISTRICT COURT
DISTRICT OF MASS.

Edward Wayland	:	
v	:	Mag. No 78-57-P CA 76-3467-T CAl Miax 78-8021
Town of Ipswich	:	

MOTION TO VACATE DENIAL OF
MOTION TO APPEAL FORMA PAUPERIS

Comes now the Plaintiff, Edward Wayland, and moves the Court to Vacate order of denial of Motion to Appeal Forma Pauperis

1. In denying the motion, the United States has failed to protect the Plaintiff in direct violation of the guarantees of the Constitution of the United States.

denied J Tauro 3/23/78

2. The orders of June 10, 1977, and Jan 6, 1978 by Tauro DJ are not valid on the basis that Tauro was adversary in 1973 (a fact not remembered in time) and had since stated in open court that unless Plaintiff raised pleadings (in violation of S Ct findings) to professional level, he would dismiss. Not being a professional, it is difficult for the Plaintiff to meet a level acceptible.

3. What Tauro DJ did or did not order is irrelevant on another basis: that Motion to Proceed Forma Pauperis is a (divorced) motion and that during proceedings, Tauro DJ accepted status of Forma Pauperis.

4. Amendment 1 guarantees the right of the Plaintiff to petition the government for redress of grievances. There are no conditions attached to that guarantee. And any rules, statutes, orders, prior "case-law" in violation of that guarantee are void by the Supremacy Clause. This is confirmed by Green v U.S.

And, thereby, the cases and rules cited in the denial do not apply, and have no bearing wherever they conflict with the Plaintiff's right to petition.

5. The Memorandum and Order has not established the Plaintiff's motion as frivolous, for the cases cited to support the contention violate the Supremacy Clause and are invalid.

6. In denying the Motion without a hearing, the Court has

2

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Edward Wayland	:	
v	:	CA No. 76-3467-T CAl
Town of Ipswich	:	

AFFIDAVITkIN SUPPORT OF MOTION TO PROCEED

ON APPEAL IN FORMA PAUPERIS

I, Edward Wayland, being duly sworn, depose and say that I am the appellant in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay costs or give security therefor. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor:

I further swear that since March 18, 1968 I have received no lawful money as defined by the Constitution of the United States of America.

respectfully submitted

Edward Wayland pro se
forma pauperis

SUBSCRIBED AND SWORN TO before me this 30th day of January 1978

Notary Public Commission Expires 7/5/81

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Misc. No. 78-8021.

EDWARD WAYLAND,
Plaintiff, Appellant,

v.

TOWN OF IPSWICH,
Defendand, Appellee.

MEMORANDUM AND ORDER

Entered March 9, 1978

Mr. Wayland has appealed from the dismissal of his complaint in which he alleged that his rights under 42 U.S.C. §§ 1983, 1985, 18 U.S.C. §§ 241, 2236, and several constitutional amendments were violated. He has moved this court to be allowed to proceed in forma pauperis and for an enlargment of time within which to file his brief.

Upon reviewing the record and all papers filed in this case, we have determined that no substantial question is raised by this appeal. Therefore, pursuant to our authority under Rule 12 of the Rules for the United States Court of Appeals for the First Circuit, we hereby affirm the judgment entered by the district court for the following reasons. Municipalitites are not subject to suits for damages or injunctive relief under either sections 1983 or 1985. Kostka v. Hogg, 560 F.2d 37, 39, 43 (1st Cir. 1977); Bosely v. City of Euclid, 496 F.2d 193, 196 (6th Cir. 1974); Spampinato v. City of New York, 311 F.2d 439, 440 (2nd Cir. 1962), cert. denied 372 U.S. 980 (1963). Appellant lacks standing to bring a criminal action, so his claims under 18 U.S.C. §§ 241, 2236 were properly dismissed. Damages cannot be recovered from a municipality on the ground that it is vicariously liable for the constitutional wrongs of its employees. Kostka, supra, 560 F.2d at 44. Finally, appellant has failed to state a claim entitling him to injunctive relief for violation of his constitutional rights because it does not appear from either his complaint or amended complaint that the official misconduct to which he allegedly has been subjected is ongoing or likely to reoccur. Holiday Inns of America, Inc. v. B. & B. Corp., 409 F.2d 614, 618 (3rd Cir. 1969).

The judgment of the district court is affirmed and the motions for leave to proceed in forma pauperis and for enlargement of time are therefor denied.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[Cert.cc: Clerk, USDC, Mass.; cc: Messrs. Wayland, Dalton and Vincent.]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 78-8021.

EDWARD WAYLAND,
Plaintiff, Appellant,

v.

TOWN OF IPSWICH,
Defendant, Appellee.

ORDER OF COURT

Entered March 17, 1978

Upon consideration of "Plaintiff's Motion to Vacate Dismissal",

It is ordered that said motion is hereby denied.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Dalton and Wayland.]

LM

77-6835

Supreme Court, U.S.
FILED
SEP 18 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

EDWARD WAYLAND — Plaintiff/Appellant

against

TOWN OF IPSWICH — Defendant/Appellee

MOTION TO DISMISS APPEAL

Atty. Charles C. Dalton
Town Counsel, Town of Ipswich
71 Central Street
Ipswich, Massachusetts 01938

Edward Wayland
8 Central Street
Wilmington, Massachusetts 01887

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

No. 77-6835

EDWARD WAYLAND, Appellant

vs.

TOWN OF IPSWICH, Appellee

MOTION TO DISMISS APPEAL

Appellee moves that Court dismiss the appeal herein on the following grounds:

I THIS HONORABLE COURT LACKS JURISDICTION OVER THREE OF THE FIVE ORDERS APPEALED FROM AND THE APPELLANT'S NOTICE OF APPEAL WAS NOT FILED WITHIN THE TIME ALLOWED BY LAW.

The Appellant has appealed from an order of District Court Judge Tauro (Appellant Jurisdictional Statement, Appendix F), dated June 10, 1977. There is no statutory right of appeal to the Supreme Court from this order in 28 U.S.C. and the Appellant filed his appeal on February 21, 1978, more than eight months after the order.

The Appellant has appealed for an Order of District Court Judge Tauro (Appellant Jurisdictional Statement, Appendix G), dated January 1, 1978. There is no statutory right of appeal to the Supreme Court from this order in 28 U.S.C.; the Appellant filed his appeal on February 21, 1978, more than two months after the order.

The Appellant has appealed a Memorandum and Order of U.S. Magistrate Princi, dated March 1, 1978 (Appellant Jurisdictional Statement, Appendix H). There is no statutory right of appeal to the Supreme Court from an order of a U. S. Magistrate.

The Appellant has not complied, nor made any effort to comply with Supreme Court Rule 53(1). The Appellant has not filed in the District Court, the Court of Appeals, nor in the Supreme Court, the mandatory motion for leave to proceed in forma pauperis nor the mandatory affidavit required by Supreme Court Rule 53(1). The Appellant has failed to comply with the provisions of

HARLES C. DALTON
ATTORNEY AT LAW
ENTY-ONE CENTRAL ST.
PSWICH, MASS. 01938
LEPHONE 617 - 356-0106

28 U.S.C. 1915 at all times; the Appellant is not and has not been at any material time, indigent, and has refused to retain legal counsel to represent him although able to afford legal counsel.

In addition, the Appellant has not specified the statutes under which he has taken the five appeals to the Supreme Court in Appellant's Notice of Appeal, as required by Supreme Court Rule 10.2.

II NO FEDERAL OR STATE STATUTE WAS DECLARED UNCONSTITUTIONAL BY THE COURT OF OF APPEALS ORDER.

The dismissal of the Appellant's Complaint by the District Court (Appellant Jurisdictional Statement, Appendix G) did not declare any state or federal statute unconstitutional.

The Appellant's Amended Complaint (Brief, Appendix A) clearly seeks that the Court hold the Appellee vicariously liable for the unconstitutional acts of the Chief of Police and five police officers under 42 U.S.C. 1983 and 1985. No other grounds for relief against the Appellee are alleged. The Appellant is not entitled to such relief as a matter of law; the Complaint was therefore properly dismissed. Kosta v. Hogg 560 F2 37 (First Cir. 1977), Monell v. New York City - U.S. - No. 75-1914, dec. 6-6-78.

The Appellant's Jurisdictional Statement states that he is appealing the alleged denial of a jury trial, an alleged "Bill-of-Attainder", denial of vicarious liability of the Appellee because of actions of police officers and Town Counsel (p. 1,2). The jurisdictional grounds and "questions presented" by the Appellant have no relation to the First Circuit Court of Appeals Order (Appellant's Jurisdictional Statement, Appendix K).

III IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE MEMORANDUM AND ORDER OF THE FIRST CIRCUIT COURT OF APPEALS IS BASED ARE SO INSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

The Order of the Court of Appeals (Appellant's Jurisdictional Statement, Appendix K) rules that:

(A) the Appellant's Complaint under 42 U.S.C. 1983 and 1985 was properly dismissed by the district court;

(B) the Appellant will not be permitted to proceed with the appeal in forma pauperis; and

(C) the Appellant will not be given an enlargement of time to file his brief.

The Appellant's Jurisdictional Statement does not address orders (B) and (C) of the Court of Appeals at all. The question of the timeliness of an appeal of a district court judgment is governed by Rule 4 of the Federal Rules of Appellate Procedure; the question of the ability of an appealing litigant to

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H, MASS. 01938
E 617 - 558-0106

proceed in forma pauperis in the appeal of a district court judgment is governed by Rule 24 of the Federal Rules of Appellate Procedure. In both instances, the proper forum for the presentation of such motions (and affidavit) is the district court, not the Court of Appeals. The Appellant while able to afford legal counsel, chose to proceed pro se at all times. Procedural failures of such insignificance should not justify review by the Supreme Court.

In regard to the substantive issue - the failure to state a legally tenable claim for relief against a municipality under 42 U.S.C. 1983 and 1985 - a reading of the "Plaintiff's Bill of Complaint Amended" and "Statement of Facts" (Jurisdictional Statement, p. 2 and 3) clearly shows that the Appellant alleges only negligence against the Town (Complaint, Paragraph 5(A) and 5(C) in the employment of certain municipal personnel. In the segment of the Jurisdictional Statement entitled "Vicarious Liability" (p. 5-7), the Appellant sets forth the conceptual framework of his Complaint against the Town. In essence, the Appellant seeks punitive damages on the basis of respondeat superior, the existence of an agency relationship, that of traditional master-servant, between the Town and five police officers and the Town Counsel. It is clear as a matter of law that such vicarious liability is not legally recognized in these Civil Rights Actions.

> ...Local governing bodies, therefore, can be sued directly under #1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other #1983 "person", by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels...
>
> On the other hand, the language of #1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality can not be held liable solely because it employs a tortfeasor - or in other words, a municipality cannot be held liable under #1983 on a respondeat superior theory. Monell v. New York City No. 75-1914 46 Law Week 4569, 4578 (1978).

The issues raised by the Appellant's Claim of Appeal, as set forth at length in the Jurisdictional Statement, raises no substantial questions of Constitutional, statutory, or procedural law.

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CONCLUSION

For the reasons stated above, the Appellant's Appeal should be dismissed.

Respectfully submitted,

Charles C. Dalton

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Edward Wayland	:	
v	:	CIVIL NO. 76-3467-T
Town of Ipswich, Mass.	:	

PLAINTIFF'S BILL OF COMPLAINT AMENDED

Comes now the Plaintiff, Edward Wayland, complains that agents for and of the Town of Ipswich, namely: Armand Brouillette (Chief of Police), Peter Foote, Charles D. Surpitski, and two unknown officers have deprived the Plaintiff of many Civil Rights guaranteed by the Constitution of the United States. Said officers subjected the Plaintiff to threats, false arrest, assault and battery, illegal search and seizure; deprived the Plaintiff of equal protection under the law; and sundry other actions of misconduct under the color-of-law. For these actions the Town of Ipswich is responsible and liable.

1. The Plaintiff, Edward Wayland, is a citizen of the United States ofl Ameriea, and is a resident of Ipswich, Essex County, Commonwealth of Massachusetts.

2. The Town of Ipswich, Essex County, Commonwealth of Massachusetts is herein named Defendant.

3. Jurisdiction is granted to this Court by and under provisions of Civil Rights Act 42 U.S.C.S. 1983, 1985;
28 U.S.C. 1331, 1343;
18 U.S.C. 241, 2236;
Amendments 1, 2, 4, 5, 6, 9, 10, 14.

4(a) The Defendant, Town of Ipswich, employed Armand Brouillette, Peter Foote, Charles D. Surpitski, and two unknown officers on May 20, 1976, and after, when the

misconduct and wrongdoing deprived the Plaintiff of his constitutional rights.

(b) When the Plaintiff, Edward Wayland, went to the assistance of Marie McMahon, who was under arrest at the Ipswich Police Station for allegedly firing at (bad) naéghbors, three questionable sisters, the Plaintiff was threatened, held against his will, searched illegally, his vehicle was searched, and he was forced to drive 5 miles to his home where two handguns were illegally seized. Then, days later, he was falsly charged with Criminal Motor Vehicle violation of which he was found not guilty. All misconduct actions were done with extreme hostility and malice.

(c) The Police Department refused to investigate the counter-claims and countercharges made by the Plaintiff, Edward Wayland; further depriving Plaintiff of equal protection under the law; wilfully suppressed favorable evidence.

5(a) The Defendant, Town of Ipswich, is responsible for the actions of employed personell, and all those acting as agent. The position of "Chief of Police" is agent for the Town of Ipswich.

(b) The Plaintiff avers the common trugh: educationand competence are not the same thing; that an educated incompetent is the most dangerous, and a menace; expecially when the incompetence is compounded with willful and extreme malice.

(c) The Defendant, Town of Ipswich, is negligent to have employed incompetent or other in a position of power where misconduct and wrongdoing can, and did, create havoc and much damage to the Civil Rights of the Plaintiff, Edward Wayland, without proper and adequate safeguards for the protection of the citizen.

6(a) Separate action has been taken against the named wrong-doers in that pursuant to Civil Rights Act misconduct under color-of-law deprives them of the lawful protection of the Defendant, Town of Ipswich.

(b) Plaintiff, Edward Wayland, denies the Constitutionality as Obviously Unconstitutional, the Sections of the Motor Vehicle, and Mass. Firearms Statutes under which these wrondoeas acted.

7(a) The Criminal charges brought by the Defendant, Town of Ipswich, have caused the Plaintiff, Edward Wayland, large expenses, heavy losses, damage and defamation of his

of his character, and permanently scarred by an undeserved Criminal Record for which the Plaintiff, Edward Wayland is seeking $500,00.00 in damages, exemplary damages, plus costs and expenses.

(b)Punitive damages are not costs nor expenses; and are allowed by the Court. The Plaintiff, Edward Wayland, is seeking $5,000,000.00 in punitive damages.

8. Plaintiff, Edward Wayland, demands Jury Trial, pursuant to Rule 38 of the Federal Rules of Civil Proceedure.

WHEREFORE Plaintiff prays:

1. That this Honorable Court order the Town of Ipswich, and all others subject, be forthwith restrained from further harassment of the Plaintiff; and that they be restrained from depriving the Plaintiff of any of his Constitutional Rights.
2. That this Honorable Court order Defendant, Town of Ipswich to pay $500,000.00 in damages, exemplary damages and all costs and expenses.
3. That the Defendant, Town of Ipswich, be assessed and ordered to pay $5,000,000.00 in punitive damages.
4. And such other relief as this Court may deem proper.

Edward Wayland pro se
forma pauperis

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17 Leslie Rd.
Ipswich, Mass.

Calabrese v Chuimento (1944 DC N.J.) 3 FRD 435

(5) "A complaint is not to be dismissed because the plaintiff has misconceived proper legal theory of the claim; it is sufficient if it shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief."
Jenkins v Fidelity Bank (1973 DC Pa) 365 F Supp 1391

(6) "Under the requirement that the pleadings set out a short and plain statement of the claim showing that pleader is entitled to relief it is not necessary to set out the legal theory on which the claim is based but it is enough that the facts alleged support a legal basis for relief."
Sherwin v Oil City Nat. Bank (1955 DC Pa) 18 FRD 188, aff'd (CA3) 229 F2d 835

(7) "It suffices to plead conclusions, whether of fact or of law, provided the complaint is sufficiently definite so as to give fair notice to the opposite party of the precise nature of the claim."
Mails v Kansas City Public Service Co. (1948 DC Mø)0 51 F Supp 562

(8) "The pleader is only required to disclose adequate information as the basis of his claim for relief and not his evidence."
Greater Valley Terminal Co. v Peltz St. Terminals Inc. (1957 DC Pa) 21 FRD 167

(9) "The proper procedure used to attack a pleading that is vague and ambiguous is by motion for more definite statement and not by motion to dismiss."
Fedorchak v Montgomery Ward (1955 DC Pa) 18 FRD 1

(10) "Under this rule (11) pleading should not be stricken merely because it is argumentative."
Murchisón v Kirby (1961 DC N.Y.) 27 FRD 14

Signed under penalties of perjury.

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forma pauperis
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Ipswich, Mass.

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OFFICE OF THE CL
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

Edward Wayland — Appellant/Plaintiff

against

Town of Ipswich — Appellee/Defencant

No. 77-6835

PARTIAL REPLY AND OBJECTION

Edward Wayland
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Wilmington, Mass 01887

Charles C Dalton'
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PLAINTIFF'S AFFIDAVIT IN SUPPORT OF AMENDED COMPLAINT

During the early years of the New Nation, the proceedure methods used in the Federal and State Courts left much to be desired. In order to minimize chaos and confusion, the Supreme Court eventually developed Rules of Proceedure..a useful tool, but still only a tool.

Rule 84: "The Forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate."

The purpose of these Rules was and is an aid to the dispensation of justice; and not to hinder it. Many of the Federal Rule Decisions, interpretation of the Rules, have built guidelines and safety measures at Justice; and not the perfection of purely mechanistic methods.

Anybody, with the required time, can learn to be a good mechanic. But mechanism for the sake of mechanism is guaranteed to dry-up and to kill the spirit of Justice built into the Judicial system by the original Founders.

The Rules are an aid to Justice; and they are not an end in themselves. Justice is not an assembly line (at say: Ford Motor Company). The Rules point the way, but not the way itself.

The FRD and other decisions, relative to the rules precise forms are not mandatory (1); to be a guide(2). Inartistic Complaint is not ground for dismissal(3). That vague or unclear complaint is not subject to dismissal(4); nor because of misconceived legal theory of claim(5); that the legal theory is not mandatory(6). It is proper to plead conclusions(7); and information rather than evidence(8). A vague and ambiguous complaint cannot be attacked by motion to dismiss(9), nor stricken because argumentative(10).

In conclusion, The Plaintiff, Edward Wayland, herein avers that though the COMPLAINT AMENDED may have defects it is well within the limits established by the FEDERAL RULES OF CIVIL PROCEDURE.

(1) "Forms are not mandatory, but are intended to indicate brevity and simplicity of statement which the rules contemplate."
Fahs v Merrill (1944 CA5 Fla) 142 F2d 691, aff'd 324 U.S. 305, 89 L Ed 963, 65 S Ct 655, reh den 324 U.S. 888, 89 L Ed 1430, 65 S Ct 883.

(2) "Better practice is to utilize forms as guide in drafting pleadings."
Quilty v United Fruit Co. (1946 DC N.Y.) 6 FRD 216

(3) "Complaint prepared by plaintiff would not be dismissed, though inartistically drawn, since it stated a cause of action within four corners of complaint."
Brooks v Pennsylavania R. Co. (1950 DC N.Y.) 91 F Supp 101

(4) "The statement in the complaint may not be fully clear or artistically drawn, but such objections are not the subject of motion to dismiss."

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

Edward Wayland,
Appellant/Plaintiff

v

Town of Ipswich
Appellee/Defendant

NO. 77-6835

PARTIAL REPLY AND OBJECTION

Comes now the Appellant, Edward Wayland, and moves this Court by his objection to strike the Appellee's MOTION TO DISMISS on the basis of bad faith, unclean hands rule, and perjury.

In addition to a direct lie, the indirect lie of deliberate distortion, misrepresentation, being wilful, is also perjury, and more so when done by a trained person who is alleged to know the laws, statutes, and Constitution.

The Appellant, Edward Wayland, herein denies all direct and implied allegations; and so makes objection, in that by making objection, every point is brought into challenge; and is much shorter than direct and immediate denial and reply. For example: on page 3 of Appellee's MOTION:

"The Appellant while able to afford legal counsel, chose to proceed pro se at all times."

This is an outright LIE, and Charles C Dalton, Town Counsel for Town of Ipswich well knows it.

Appellant, Edward Wayland, formerly of the Manhattan Project, and also formerly politically active (not Ipswich); well-cognizant of the infra-political structure, and indigent, tried several attorneys, and was turned down; Judge Tauro, with Dalton present referred Appellant to ACLU, who refused on the "grounds" that office was interested in class-action, rather than individual. (Which puzzled Appellant) The attorneys referred by ACLU also made excuses.

Thus, with knowledge of this, Appellee directly commits perjury by stating: "chose to proceed pro se at all times."

Motive for such action?--:

Massachusetts General Laws Ch 41

Section 100E (pg 304)

"A citl or town, subject to appropriation, idemnify any municipal officer for expenses or damages by him in the defense or settlement of a officer for expenses or damages by him in the defense or settlement of a claim against him in an amount not to exceed one million dollars, which claim arose out of acts performed by such officer while acting within the scope of his official duties or employment;

provided, that the defense or settlement of such claim shall have been made by the city solicitor or town counsel...."

Section 100I (pg 306)

"Idemnification of municipal officers; civil rights violations; damages arising from official duties

"Any city...or any town...shall idemnify and save harmless municipal officers, elected or appointed, from personal financial loss and expense including reasonable legal fees and costs, if any, in an amount not to exceed one million dollars, arising out of any claim, demand, suit or judgement by reason of any act or omission including a violation of civil rights of any person under any federal law, if the official at the time of such act or omission was acting within the scope of his official duties or employment. No such municipal officer shall be idemnified under this section if he acted in a grossly negligent or malicious manner."

The above has established motive for the subsequent and continuing violations of the Appellant's Constitutional Rights. These Statutes, Appellant, Edward Wayland, was not aware of when he brought suit; in fact, Appellant knew very little law, rulings, etc., and has been learning, with handicaps, as rapidly as possible...even at this date he still has a long way to go.

However, as the Appellee, and this Court know, when a challenge is made as to how Court Findings were made, all the findings are challenged, and it is not necessary to list nor refer to them; And this, the Appellant, Edward Wayland, has done on the basis:

1. Denial of trial by jury
2. Finding without a trial, which is a Bill-of-Attainder in that Appellant was condemned without a Fair trial.
3. And that by filing MOTION TO DISMISS, Appelle is, and has violated the Amendment 1 right to petition the government for redress of grievances; and the Amendment 7 right to jury trial....as well as many other violations

of Appellant's Civil Rights.

In reply to the charges of untimeliness, the Appellee is most sensitive of the faults of which he, himself, is most guilty: Appellee has been in default, a fact that has been ignored, and if the courts had so found him, instant case would never have gone to this Court on Appeal.

Nowhere in the Constitution is immunity granted to the Town of Ipswich; in fact, M.G.L.Ch41 Sections 100E, and 100I both admit to the non-immunity.

For the above reasons, and reasons not listed are not waived, the Appellant, Edward Wayland, prays this Court to find for the Appellant.

respectfully submitted

Edward Wayland pro se
forma pauperis

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Wilmington, Mass.